

OGC 78-3272
18 May 1978

OLC
OLC #78-10/2/7

MEMORANDUM FOR: Acting Legislative Counsel

FROM: Anthony A. Lapham
General Counsel

SUBJECT: Your Proposed Memorandum to DCI, Subject: "Request
by House Select Committee on Assassinations to Review
Hart Report"

1. I have read your proposed memorandum to the Director, subject as above. I cannot concur in the course which is proposed there.
2. Without benefit of having read the Report, it seems to me that the Committee has made a credible if not compelling showing that the Report is relevant to its investigation. A re-reading of the Memorandum of Understanding which we have struck with the Committee, including the Addendum contained in Chairman Stokes' letter to the Director dated 27 January 1978, suggests no basis to me on which we can refuse as a matter of course to provide the Committee access to this Report.
3. The basis which is set forth in the draft letter for denying the Committee access to the Hart Report strikes me as unconvincing. Even if our basis for withholding the Report were its extraordinary intelligence sensitivity, we could only hope to sustain our position, should the Committee press its demand to the point of authorizing a subpoena, if we could rebut the claim of relevance or if the President backed us by asserting executive privilege. However that may be, the case made in the draft letter, to justify a denial of Committee access, is that the Report was prepared for internal consumption and that Committee access would have a chilling effect on free and candid internal Agency communications. The same sort of a case could be made with respect to many documents that we make available to various congressional committees, and probably as to many documents to which the Assassination Committee itself has already had access, and in my view it stands virtually no chance either of persuading the Committee to forbear or of prevailing against a subpoena should push come to shove.

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4. I believe these factors should be brought to the Director's attention. I understand that the Director has already declined on several occasions to provide the Committee access to this Report, though it is my understanding that he has not yet done so in writing. Since, in my opinion, the Director probably cannot present a successful defense in the event the Committee subpoenas the documents, you may wish to suggest a more flexible response at this point, giving consideration to such possibilities as providing the Committee access to a sanitized copy of the Report, or perhaps permitting Professor Blakey to read the Report under carefully controlled circumstances. At the very least the difficulty of sustaining the Director's position against a challenge should not be minimized in connection with the decision to reaffirm that position.

5. While legal rights and powers are always background factors in negotiations with congressional committees respecting document access and production, it is also true that non-legal factors and practical accommodations most often govern the outcome of these negotiations. Apart from the suggestions noted above, are there other steps still open to us short of a formal denial, as for example a Stokes/DCI or Stokes/DDCI meeting?

6. In the event that a more definitive response is required of this Office, I believe it will be necessary for us to read the Hart Report firsthand.


Anthony A. Lapham